

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CANNAMARK, INC., a Washington
Corporation, d/b/a OLEO,

Plaintiff,

v.

LIGHTHOUSE STRATEGIES, LLC, a
Nevada Limited Liability Company; and
CANNABINIERS, a California business
entity,

Defendants.

CASE NO. C18-1629-JCC

ORDER

This matter comes before the Court on Plaintiff's motion to remand (Dkt. No. 6). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained herein.

I. BACKGROUND

Plaintiff Cannamark, Inc. is a Washington corporation with its principal place of business in King County, Washington. (Dkt. No. 1-1 at 2.) Plaintiff filed this lawsuit in King County Superior Court against Defendants Lighthouse Strategies, LLC, a Nevada limited liability company with its principal place of business in California, and Cannabiniers, a California

1 business entity.¹ (*Id.*; Dkt. No. 2.) Plaintiff alleges that Defendants breached the parties’ mutual
2 nondisclosure agreement and is liable for violating Washington’s Uniform Trade Secrets Act and
3 Consumer Protection Act. (Dkt. No. 1-1 at 9–11.)

4 After Defendants removed the case to this Court, Plaintiff filed the present motion to
5 remand. (Dkt. Nos. 1, 6.) Plaintiff asks the Court to remand the case because Defendants have
6 failed “to prove diversity of citizenship between plaintiff and the various members of the
7 defendant limited liability company.” (Dkt. No. 6 at 1.) Defendants argue that they have alleged
8 facts which, by a preponderance of the evidence, demonstrate that the Court has diversity
9 jurisdiction. (Dkt. No. 23 at 7.)

10 **II. DISCUSSION**

11 **A. Plaintiff’s Motion to Remand**

12 A party to a civil action brought in state court may remove that action to federal court if
13 the district court would have had original jurisdiction at the time of both commencement of the
14 action and removal. *See* 28 U.S.C. § 1441(a); Charles Alan Wright & Arthur R. Miller, *FEDERAL*
15 *PRACTICE AND PROCEDURE* § 3723 (4th ed. 2013). Once removed, the case can be remanded to
16 state court for either lack of subject matter jurisdiction or defects in the removal procedure. *See*
17 28 U.S.C. § 1447(c). District courts have diversity jurisdiction where no plaintiff and defendant
18 are citizens of the same state and the amount in controversy is greater than \$75,000. *See* 28
19 U.S.C. § 1332(a)(1); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). “The party seeking to
20 invoke the district court’s diversity jurisdiction always bears the burden of both pleading and
21 proving diversity jurisdiction.” *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 613–14 (9th Cir.
22 2016).

23 District courts analyze a challenge to removal jurisdiction under the same standard

24 ¹ The complaint characterizes Cannabiniers as “an unincorporated division of Lighthouse
25 Strategies, LLC.” (Dkt. No. 1-2 at 3.) In a declaration filed in opposition to remand, Defendants
26 state that Cannabiniers “is not a discrete legal entity” but a division of U.S. Coffee & Tea Pod,
LLC, which is owned by Defendant Lighthouse Strategies, LLC. (Dkt. No. 25 at 3.)

1 applied to a motion to dismiss for lack of subject matter jurisdiction. *See Leite v. Crane Co.*, 749
2 F.3d 1117, 1121 (9th Cir. 2014) (“Challenges to the existence of removal jurisdiction should be
3 resolved within [the Rule 12(b)(1)] framework, given the parallel nature of the inquiry.”). A
4 challenge to the Court’s subject matter jurisdiction can be either facial or factual. *Id.* “A facial
5 attack accepts the truth of the plaintiff’s allegations but asserts that they are insufficient on their
6 face to invoke federal jurisdiction.” *Id.* (internal quotation marks omitted). In contrast, a factual
7 attack “contests the truth of the plaintiff’s factual allegations, usually by introducing evidence
8 outside the pleadings.” *Id.*

9 Here, Plaintiff makes a facial attack to the Court’s subject matter jurisdiction. (Dkt. No. 6
10 at 4.) Plaintiff does not provide any evidence outside of the pleadings to suggest that Defendants
11 or their members are Washington citizens, such that there is not complete diversity of
12 citizenship.² Rather, Plaintiff asserts that “the complaint on its face does not plead facts
13 sufficient to establish the existence of diversity jurisdiction” (*Id.*) Plaintiff argues that
14 Defendants have not sufficiently alleged the citizenship of their individual members and
15 therefore “have failed to provide competent, sufficient proof of their right to removal.” (*Id.* at 6.)

16 In assessing Plaintiff’s facial attack on jurisdiction, the Court looks to both the complaint
17 and notice of removal. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547,
18 553 (2014) (“[A] defendant seeking to remove a case to a federal court must file in the federal
19 forum a notice of removal “containing a short and plain statement of the grounds for removal.”)
20 (citing 28 U.S.C. § 1446(a)). The complaint alleges that Plaintiff is a Washington corporation
21 with its principal place of business in King County, Washington. (Dkt. No. 1-1 at 2.) It further
22 alleges that Defendant Lighthouse Strategies, LLC is a Nevada limited liability company with its
23 principal place of business in California, and that Defendant Cannabiniers is an unincorporated
24 division of Lighthouse Strategies, LLC. (*Id.*) The complaint does not allege that either Defendant
25 is a citizen of Washington.

26 ² Plaintiff does not dispute that the amount in controversy exceeds \$75,000.

1 In their notice of removal, Defendants state that Lighthouse Strategies, LLC “has 86
2 members, and all 86 members are citizens and residents of California, Massachusetts, Nevada,
3 Texas, Delaware, Illinois, New Jersey, New York, and New Hampshire, and none are citizens
4 and residents of Washington.”³ (Dkt. No. 2 at 2.) A limited liability company, like a partnership,
5 is a citizen of every state of which “its owners/members are citizens.” *Johnson v. Columbia*
6 *Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Accepting the allegations of the
7 complaint and notice of removal as true, as the Court must, Defendants have sufficiently alleged
8 that each member is a citizen of a state other than Washington. In other words, Defendants have
9 sufficiently pled that there is complete diversity of citizenship. *See NewGen, LLC*, 840 F.3d at
10 613–14.

11 Plaintiff’s arguments to the contrary are unavailing. Plaintiff argues that the declarations
12 provided by Defendants in support of removal are insufficient to establish that each of their
13 members is a citizen of a state other than Washington. (Dkt. No. 6 at 5) (“Mr. Mayol presents
14 nothing by way of support for his claimed personal knowledge that there are 86 members of
15 Lighthouse Strategies, LLC, and that none of them considers himself or herself to be domiciled
16 in, and thus a citizen of, Washington.”) First, the Court need not even consider Defendants’
17 declarations because the complaint and notice of removal contain allegations that are sufficient
18 to establish complete diversity.⁴ Second, Plaintiff’s attack on Defendants’ declarations is an
19 attempt to mount a factual challenge to jurisdiction, when Plaintiff has only made a facial
20 challenge. *See Leite*, 749 F.3d at 1121. As the Court has already noted, Plaintiff has not provided
21 evidence that any of Defendants’ members is a citizen of Washington. In essence, Plaintiff is
22 asking this Court to not accept the allegations in Defendants’ notice of removal as true and to
23 instead require Defendants to prove complete diversity with summary judgment-type evidence.

24 ³ In a declaration made in opposition to remand, Defendants corrected themselves by
25 stating that one of their members is a citizen of Pennsylvania, not Delaware. (Dkt. No. 25 at 2.)

26 ⁴ For that reason, Plaintiff’s motion to strike the declarations (Dkt. No. 26) is DENIED.
In reaching its decision, the Court did not consider Defendants’ surreply (Dkt. No. 29).

1 Given that Plaintiff has made only a facial challenge to removal, its position amounts to burden
2 shifting.

3 For those reasons, the Court FINDS that it has diversity jurisdiction over Plaintiff's
4 claims. Plaintiff's motion to remand is DENIED.

5 **B. Defendants' Motion to Dismiss**

6 In their response in opposition to Plaintiff's motion to remand, Defendants also ask the
7 Court to *sua sponte* dismiss Plaintiff's complaint for lack of personal jurisdiction. (Dkt. No. 23 at
8 26.) Defendants' request is both procedurally and substantively deficient. First, the Local Civil
9 Rules do not allow parties to raise a motion to dismiss in a response. Second, even if the Court
10 were to *sua sponte* consider Defendants' motion, the record is inadequate to decide whether the
11 motion has merit. Therefore, Defendants' motion to dismiss for lack of personal jurisdiction is
12 DENIED.

13 **III. CONCLUSION**

14 For the foregoing reasons, Plaintiff's motion to remand (Dkt. No. 6) is DENIED.

15 DATED this 2nd day of January 2019.

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19 John C. Coughenour
20 UNITED STATES DISTRICT JUDGE
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